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Integrity in Focus

紀律研訊個案 Disciplinary hearing case

有關安排訂金託管的失實陳述

Misrepresentation on the stakeholding arrangement for the deposit

引言

持牌人在執業期間不可向客戶作出任何失實陳述，當中包括不得向客戶提供關於付款安排的錯誤資訊，否則有機會被監管局紀律處分。

Introduction

Licensees must not make any misrepresentation to their clients in the course of their practice, including that, they must not provide clients with any inaccurate information on the payment arrangement. Otherwise, they may be disciplined by the EAA.

事件經過

一名地產代理向一對夫婦介紹一個位於香港境外的未建成物業。在簽署預訂表格以購買該項目其中一個單位前，該地產代理告訴他們所支付的首期訂金會由律師託管或以信託形式保管，而正式買賣合約中將有條款訂明上述安排。該地產代理更向他們保證，倘若物業最終未能竣工，可要求律師退回訂金。

Incident

An estate agent introduced an uncompleted property situated outside Hong Kong to a couple. Before they signed the reservation form for purchasing a unit of the development, the estate agent told them the initial deposit they paid would be stakeheld by the solicitor or held in trust, and such arrangement would be stipulated in the formal agreement for sale and purchase. The estate agent further assured them that if the property failed to be completed, they could request a refund of the deposit from the solicitor.

然而，該對夫婦其後獲賣方律師證實，買賣合約上並沒有訂明有關訂金託管的安排，有關訂金將會直接交付賣方。兩人最終決定取消交易，並向監管局作出投訴。



However, the couple later verified the information with the vendor's solicitor and found out that there was no provision in the agreement for sale and purchase regarding the stakeholding arrangement for the deposit. The deposit would be paid to the vendor directly. The couple cancelled the deal and lodged a complaint to the EAA.

研訊結果

監管局紀律委員會認為，該地產代理向該對夫婦就訂金託管安排作出失實陳述，違反了《操守守則》第 3.7.2 段，即「地產代理和營業員應避免做出可能令地產代理行業信譽及 / 或名聲受損的行為」。

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定譴責該名地產代理，向他罰款 5,000 元，並在其牌照上附加條件，要求他在 12 個月內取得持續專業進修計劃下的 6 個學分。

Result

The EAA Disciplinary Committee was of the view that the estate agent made a misrepresentation on the stakeholding arrangement of the deposit to the couple, hence in breach of paragraph 3.7.2 of the *Code of Ethics*, which stipulates: “estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.”

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand him, impose a fine of \$5,000 and attach a condition to his licence, requiring him to obtain six points under the EAA’s Continuing Professional Development Scheme in 12 months.



周業德先生
地產代理（從業員）總公會副主席
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業界意見 Comment from trade

地產代理向客戶提供有關訂金託管的資訊前，必須與發展商核實清楚相關條款，切勿輕率向客戶作出任何保證。倘若因失實陳述而留下違規紀錄，不但失去客戶信任，亦有損從業員的聲譽。

Before informing clients about the stakeholding arrangement of the deposit, estate agents must verify the relevant terms with the developer and must not hastily make any assurance to clients. In case the practitioner is disciplined due to misrepresentation, his disciplinary record will cost him his client's trust and his own reputation.